Best, et al. v. Grant County

Monitor's Report

Third Quarter, 2008

October 22, 2008

Submitted by Francisco Rodriguez, Settlement Monitor

Monitor's Activities

My practice as Monitor has been to visit Grant County about once a month. During the third quarter of this year, I travelled to Ephrata on three separate occasions:

- July 28, 2008
- August 18, 2008
- September 2-3, 2008

While in Ephrata, I observed court proceedings, reviewed court files, and met with public defenders. I also met with investigator candidates in Ephrata, Ellensburg, and Seattle during the third quarter. Between site visits, I maintain regular contact with supervisor Alan White and have periodic contact with individual defenders, investigators, and counsel for both parties.

In addition to my regular activities, during the third quarter, I conducted an in depth review of case dockets and court files in order to evaluate defender motions practice, use of experts, and case outcomes.

Access to Information

The Settlement Agreement provides that the Monitor shall have broad access to information concerning the Grant County public defense system. Supervising Attorney Alan White and his assistant Aracely Yanez continue to be very cooperative in responding to my requests for information. The Grant County Superior Court Clerk's Office is also exceedingly accommodating in providing access to court files.

2007-08 Compliance

I understand that the County has appealed some of my cure recommendations to the court but that the parties are discussing a stipulated resolution of those issues.

Attorney Staffing/Caseloads

The County made one change in its attorney staff during the third quarter. Defender Ryan Earl resigned on July 10, creating an opening for a full-time defender. Because County employment contracts require three months notice, the County has been able to continue assigning new cases to Mr. Earl for the entire quarter. I understand that the County has agreed not to assign Mr. Earl any cases in the fourth quarter.

In order to compensate for the loss of Mr. Earl, the County hired Melissa MacDougall. Ms. MacDougall started work in mid-September, allowing her to overlap with Mr. Earl for the month. This overlap provided the County with an extra month of caseload capacity overall and helped relieve pressure on the system.

The Settlement Agreement establishes an annual caseload limit of 150 case equivalents. In addition, the County has adopted monthly and quarterly limits to ensure that case assignments are spread relatively evenly throughout the year. During the third quarter, the County observed both its monthly and quarterly limits for all of its defenders. Moreover, Supervising Attorney Alan White succeeded in distributing case assignments in such a way as to put all but one of the County's defenders back on track to meet annual caseload limits.

At this point, only Brian Gwinn is on pace to exceed 150 case equivalents for the year. His caseload is significantly higher than that of his colleagues because he has handled all child support case assignments for the last six months or so. He took over the child support calendar when Mike Aiken became ill and has been the sole attorney covering that calendar ever since. With Mr. Gwinn fast approaching his annual limit, however, the County needs to train another defender to cover these calendars for the remainder of the year or risk exceeding caseload limits. I understand that Supervising Attorney Alan White is aware of this problem and plans to assign Brett Billingsley to handle the child support calendar during the fourth quarter.

Case assignments overall have been lower than average for each of the last four months. The reduction in assignments has provided a measure of relief to the County's public defense system. With the addition of Melissa MacDougall, the County may now have sufficient capacity to handle anticipated case assignments through the end of the year, but the County has again left itself little margin for error.

I estimate that the County has approximately 340 case equivalents available for the remainder of 2008. If the County has three average months (102 case equivalents) this quarter, the County would need only 306 case equivalents, leaving a cushion of approximately 34 "extra" case equivalents. I have previously recommended that the County maintain a minimum cushion of 50 case credits at the start of the 4th quarter. While a 34 case cushion is certainly better than none, it does not give the County adequate insurance against caseload fluctuations.

The County must be vigilant in monitoring case assignments as the end of the year approaches. In May, the County assigned its defenders 143 case equivalents. If case assignments increase to anywhere near that level for the last three months of the year, the County will again face a significant staffing shortfall. Similarly, increased work on extraordinary cases could sap the system of capacity. For example, I understand that two defenders are currently in trial on a complex attempted murder case with multiple co-defendants. That case alone could cut significantly into the County's caseload cushion. At least one other extraordinary case is expected to go to trial before year's end. Because of contingencies such as these, the prudent course would be to hire additional staff now to avoid a desperate scramble in December.

After reviewing caseload numbers and evaluating anticipated case assignments for the rest of the year, Supervising Attorney Alan White has recommended temporarily hiring an additional attorney to address the potential year-end shortfall. I support this request. I understand, however, that the County is reluctant to hire another attorney at this time. At a minimum, the County should be prepared to act quickly if forced to use its caseload capacity more rapidly than anticipated.

Training

Training opportunities in Grant County are limited. The County has been supportive of defenders who wish to pursue training outside the County. In addition, Supervising Attorney Alan White has been diligent in obtaining assistance organizing CLE sessions from the Washington Defender Association and the Washington State Office of Public Defense. Most recently, Mr. White coordinated with me and the Office Public Defense to arrange a training session taught by Jeff Ellis, a highly respected private criminal defense attorney from Seattle. Mr. Ellis addressed both mental health issues and sentencing practice in a three hour session. Alan White should be commended for taking the initiative to arrange this exceptional free training opportunity for the County's defenders.

As I have mentioned in past reports, the County should do more "in-house" trainings. Defender offices frequently use lunch meetings as an opportunity to discuss the latest case law, for example. Similarly, the County is overlooking one of its best resources by not calling upon its defenders to train each other. Supervising Attorney Alan White should consider asking each defender to lead a training session every month or two. Such trainings would cost the County nothing and would encourage the defenders to share their knowledge and experiences as well as strategize together about common problems and issues.

First Appearances

The Settlement Agreement requires that the County provide representation at initial appearances for all indigent defendants. To fulfill this obligation, the County assigns

each of its defenders to cover first appearances for a week at a time on a rotating basis throughout the year.

The defenders generally loathe first appearance duty. Some even pay colleagues to take their coverage weeks. There are several reasons for their aversion to this assignment. First, the defenders feel that they are required to invest a significant amount of time and effort into an assignment for which they are not separately compensated. Second, without a meaningful opportunity to review police reports, without access to criminal and FTA history, and without sufficient time to verify client addresses, employment, etc., representing clients at first appearance is extraordinarily frustrating. This is particularly true when defenders know that if they make a bail argument at first appearance based on the scant information available to them, the arraignment judge will not allow them to address bail again, regardless of whether they have new information or there has been a change in circumstances. Finally, defenders are frequently overwhelmed on Mondays and Tuesdays, the days that consistently have the largest number of first appearances, because in addition to covering those hearings, the defenders typically have a full load of their own cases on the calendar.

Despite their disdain for the assignment, the Grant County defenders generally do a good job representing defendants at first appearance. They seem to have met with their clients in advance, prepared for a bail argument, and reviewed the probable cause statement in advance of the hearing when available.

Past problems with providing representation to out-of-custody defendants and child support defendants appear to have been resolved. I did not observe any defendants go unrepresented during the third quarter. To the contrary, on at least a couple of occasions, I have seen public defenders jump in to assist defendants whose cases the prosecutor has called despite the absence of counsel. Although Alan White has written to both the judges and the prosecutors, I continue to see prosecutors attempting to proceed with cases in the absence of counsel. In one instance, when a defender intervened to assist the defendant, the prosecutor openly complained about the pubic defenders providing representation to out-of-custody defendants, apparently upset that such representation slows the calendar down.

In addition to representing defendants in court, the coverage attorney is expected to meet with in-custody defendants prior to court in order to obtain the information necessary to make a bail reduction and/or release motion. County policy used to require a visit in the jail prior to first appearance. In May, Supervising Attorney Alan White revised the policy to require a meeting with the client rather than a jail visit. Accordingly, I did not conduct a detailed analysis of first appearance visits during the third quarter. A brief review of the jail visitation logs suggests that despite the change in policy, most defenders continue to meet with defendants in the jail prior to first appearance.

Jail Visits

Grant County requires its defenders to make contact with all new clients within a week of assignment. For in-custody clients, a jail visit is required. The County's written policy on client contact makes clear that meeting with the client in the courtroom or in hallway outside the courtroom is not sufficient. Moreover, the jail visit must take place prior to arraignment "if at all practicable."

Timely jail visits have been an ongoing problem in Grant County. Despite the County's clear policy and repeated efforts by both Alan White and myself to emphasize the importance of the initial jail visit, some defenders have simply not made visiting their in-custody clients a priority. As in previous quarters, I found numerous cases in which inmates had to wait lengthy periods of time before receiving a visit from their assigned attorneys. Some never received a visit at all.

I reviewed 68 in-custody cases assigned from July through September of this year and found that the Grant County defenders visited their clients on or before the day of arraignment only about 38% of the time. Approximately 50% of those visits occurred on the day of arraignment.[1] Within a week of assignment, the defenders as a group had visited about 65% of their in-custody clients. Though these figures represent an improvement over last quarter, they remain too low. In particular, all defenders need to improve their efforts to meet with clients prior to arraignment.

Most defenders did visit their clients within a week of assignment during the third quarter. John Perry, Janelle Peterson, Mike Prince, Mike Haas, and Melissa MacDougall all visited 100% of their clients within a week of receiving the assignment.[2] Others visited most but not all of their clients within a week.

Two defenders, Brett Billingsley and Ryan Earl, were particularly unlikely to make timely jail visits.[3] Of his 7 in-custody clients, Mr. Billingsley did not visit any of them prior to arraignment. He visited only 1 within a week. Of his 12 in-custody clients, Mr. Earl visited only 1 prior to arraignment and none of his other 10 in-custody clients received a visit within a week of assignment. Removing these two attorneys from the calculation, the remaining defenders combined visited 88% of their clients within a week of assignment.

With respect to the untimely visits, the length of the delay varied, but there were 11 instances in which in-custody defendants waited approximately two weeks or more before receiving a visit from their assigned attorneys. One waited 27 days to meet with

[1] For the visits which occur on the day of arraignment, it is difficult to determine whether the visit actually occurred prior to arraignment as required by County policy, but for purposes of this analysis, I have assumed all such visits occurred before arraignment.
[2] On cases assigned around the Labor Day holiday, I treated visits within 8 days as within a week.
[3] In past reports, I have generally not identified defenders by name. Although my intent was to avoid singling out individual defenders for criticism, the defenders apparently felt that the ambiguity ended up unfairly directing criticism at the whole group. Accordingly, at the request of the defenders, I have identified the relevant defenders when discussing attorney performance in this report.

his attorney. Four inmates had not received a visit at all as of the end of the third quarter. In addition to those 11 inmates, I found an additional three in-custody defendants who pled guilty without ever having received a visit from their assigned attorneys. In one case, the client pled guilty at arraignment, but even when arraignment was set over one day, presumably because the client had expressed a desire to plead guilty, his attorney did not visit him in jail. With a client contemplating pleading guilty to a felony at arraignment, the failure to visit him for a meaningful, private, attorney-client consultation is inexcusable. Effective assistance of counsel requires more than the opportunity for a whispered exchange with your attorney while sitting in the jury box or a brief conversation standing around in a hallway while your attorney is between court appearances. This type of hallway justice is not the standard I presume the County is striving for.

The County must make timely jail visits a priority. The County should expect its defenders to visit their clients immediately upon assignment. The vast majority of visits should occur before arraignment, and visits should never occur more than 7 days after assignment. Grant County already has a policy in place that clearly addresses this issue. Unless that policy is enforced, however, it represents little more than an empty gesture. The County should adopt a disciplinary structure of some kind with formal warnings, reprimands, probation and the like. Such measures would help convey to the defenders how seriously the County takes its policies.

Investigator Staffing

Grant County again experienced turnover in its investigation staff. Longtime investigator Mike Lewton unexpectedly passed away in mid-September. He had been working virtually full-time on Grant County public defense cases and was one of the County's two primary investigators, so his departure left quite a vacuum. Fortunately, the County had already been in the process of securing additional investigators. At the County's request, I approved Kathleen Kennedy, Allison Taylor, Win Taylor, and Mario Torres during the third quarter. I understand that Ms. Kennedy and Mr. Torres have agreed to contract terms with the County and are already receiving cases. I hope that the County is also able to secure the services Allison Taylor and Win Taylor in the near future as they seemed highly qualified.

The defenders seem very pleased with the quality of the work from existing investigators Marv Scott, Ellyn Berg, and Jim Patterson. Assuming the new investigators are able to live up to expectations, it appears that the County has an excellent group of investigators available to its defenders. The only concern I have regarding investigation is that good investigators are in high demand and sometimes end up taking on too much work, resulting in delays on individual cases. During the third quarter, some defenders expressed concerns about the timeliness of work performed by one of the investigators. Supervising Attorney Alan White is aware of the issue and has discussed the matter with the investigator in question.

Last quarter's controversy over investigator billing has apparently been resolved. After reviewing the issue more carefully, Supervising Attorney Alan White reconsidered his position and agreed to submit un-redacted investigator billing to the County. Although I agree with Mr. White's original position rather than his current one, there is certainly room for debate on this issue. In practical terms, Mr. White's change of course has allowed the investigators to continue working and getting paid and thus averted what had been developing into a serious crisis.

Investigation Rates

For 2008, the overall rate of investigation has been 37%. The rate of investigation is now up slightly from last year. The rate for the third quarter was higher than in previous quarters. As in the past, most defenders appear to make appropriate use of investigators on their cases.

Last quarter, I noted that two of the current defenders had investigation rates that were well below the norm. One of those defenders improved his rate of investigation significantly in the third quarter. The other, Ryan Earl, continues to investigate very few cases. His investigation rate for the year is about half of the average for the other defenders. His low rate of investigation this quarter is particularly concerning in light of the fact that Supervising Attorney Alan White met with him and urged him to increase his use of investigators. Mr. Earl appears to be maintaining an active private practice, including numerous cases in King County.[4] Given his failure to visit in-custody clients and his low rate of investigation, it is possible that his private cases are interfering with his public defense work in Grant County.

Experts

The Settlement Agreement requires that public defenders request experts via *ex parte* motion and that the records relating to experts be sealed. The Settlement Agreement further specifically provides that "[u]nder no circumstances may members of the Grant County Prosecuting Attorney's Office be given access to motions for the appointment of experts or to invoices submitted by experts to the County for payment."

During the third quarter, I reviewed dockets for every felony case assigned to Grant County public defenders during 2008.[5] Among the issues I examined was the use of experts. A request for the appointment of an expert at public defense will be reflected on the docket even if made ex parte and even if the actual motion papers are sealed in the court file. GR 15(c)(5)(A). Based upon my review of over 550 felony case assignments, only four attorneys have requested experts on cases assigned this year: Karen Lindholdt,

[4] Mr. Earl has refused to submit reports detailing his work on private cases. As a result, information regarding his private cases comes from the Washington Courts website.

[5] For most cases in which the docket reflected the use of an expert or filing of a written motion, I also reviewed the court file.

Janelle Peterson, John Perry, and Julie St. Marie. Those attorneys have requested experts in a total of 10 cases, with the bulk of the requests made by Ms. Lindholdt and Ms. Peterson.[6]

Although the actual use of experts may be indicative of good defense practice, the converse is not necessarily true. It is certainly possible that some defenders simply did not receive a case assignment in which an expert was needed. My hesitation in giving the defenders the benefit of the doubt in this area is the number of cases I found involving mental health issues in which the assigned attorneys did not seek appointment of a defense expert. In my review of felony cases assigned in 2008, I found at least 7 cases in which five different defenders raised mental health issues but failed to seek appointment of a defense expert. It appears to be routine practice for some defenders to simply ask that their clients be sent to Eastern State Hospital whenever mental health concerns arise. The defenders then rely on the conclusion of the State's expert as to competency and as to whether a valid mental defense exists. While it is certainly possible that a defense expert would reach the same conclusion as the state's expert(s) in these cases, the failure to at least consult with a defense expert is troubling. I am hopeful that the recent training on mental health issues will improve the overall practice in this area.

I am concerned that several expert requests made during the third quarter were not sealed, and at least one request was not made ex parte. I understand that one or more of the Grant County Superior Court judges has questioned the propriety of hearing such requests ex parte and placing the supporting documents under seal. It is not clear from the court files, however, whether defense motions to proceed ex parte and motions to seal are being denied or are simply not being made. Accordingly, I recommend that the County develop standard forms for its defenders to use in order to ensure that when appropriate, expert requests are properly sealed in the court file.

Motions Practice

Motions practice was another issue on which I focused in my review of dockets and court files for 2008. Overall, I found 38 cases in which Grant County defenders had filed substantive motions.[7] In several cases, defenders had filed more than one brief. It appears that there has been a substantial improvement in motions practice since last quarter. Briefs in 21 of the 38 cases had been filed since July 1.

Just three attorneys have accounted for a disproportionate share of the motions filed. Karen Lindholdt, Janelle Peterson, and Julie St. Marie have filed motions in 26 cases and are responsible for 68% of the motions filed. Both John Perry and Melissa MacDougall

[6] This total only reflects expert requests in cases assigned this year. In addition, I found two expert requests submitted by Janelle Peterson in 2008 for cases assigned last year.

[7] For purposes of this analysis, I defined substantive motions as any written motion to suppress pursuant to CrR 3.5 or CrR 3.6, any written Knapstad motion, and any written brief that contained substantive legal analysis tailored to a particular case. I did not include motions for discovery, motions for depositions, motions for release, or motions in limine as those were typically either stock briefs or not particularly substantive.

have already filed multiple substantive motions even though they have only recently joined the program. The remaining defenders[8] have each filed a few substantive motions, except for Brett Billingsley, who has filed none. While it is certainly possible that some attorneys happen to have cases with more legal issues than others, I think it more likely that the attorneys who file more motions tend to take a more aggressive approach to their cases generally and are more creative in finding issues to litigate.

In addition to briefs on more substantive legal issues, I found numerous other examples of motions practice including written motions to compel discovery, motions to depose witnesses, motions for furlough, and motions for release/bail reduction. Although these motions typically involve less substantive legal analysis than the motions identified above, such motions are nonetheless an essential part of criminal practice. Many of the defenders filed motions that would fall into this category, but Janelle Peterson and Julie St. Marie did so most often. Ms. Peterson has been particularly aggressive in litigating discovery issues, and Ms. St. Marie frequently files written release motions.

Overall, I was impressed by the motions practice of Ms. Lindholdt, Ms. Peterson, and Ms. St. Marie. I was also impressed by the work of Mr. Perry and Ms. MacDougall given that they have been practicing in Grant County a relatively short time. At the same time, I have concerns about whether the remaining defenders are always filing motions when appropriate. I feel that I need more data, however, to reach any firm conclusions. Accordingly, I plan to continue to closely monitor motions practice to determine whether existing patterns continue over time. In addition, I plan to ask the Supervising Attorney to work with these defenders to help them develop a more robust motions practice.

Overall Quality of Representation

Over the past year, Grant County has taken a number of positive steps toward improving the quality of its public defense program. The County no longer employs part-time defenders, for example, and has made a number of good hiring decisions. As a result, the County now has a core group of defenders who are more than capable of providing effective assistance of counsel. Outside of that core group, however, defenders are not making timely jail visits and do not appear to be filing motions or requesting experts as often as they should.

The Grant County defenders can be roughly divided into two groups, those who aggressively litigate their cases and those who prefer to focus almost exclusively on plea negotiations and maintaining good relationships with the prosecutors.[9] What the defenders in this second group do not seem to appreciate, however, is that the two philosophies are not mutually exclusive. An aggressive motions practice, consultation with experts, and thorough investigation do not necessarily undermine plea negotiations

[8] None of my comments apply to Brian Gwinn. For most of the year, his practice has been focused exclusively on child support cases which were not the subject of this analysis.

[9] This is admittedly an oversimplification. The differences among the defenders are far from categorical. The "negotiators" do occasionally file motions, and the "litigators" end up negotiating most of their cases.

or alienate prosecutors. To the contrary, these practices often facilitate plea negotiations on terms more favorable to the defendant than would otherwise be offered.

Data on case outcomes in Grant County bears this out. In the cases in which Grant County defenders filed motions, they obtained a favorable outcome (misdemeanor or dismissal)[10] 58% of the time compared to only 34% for cases overall.[11] Similarly, looking at all case outcomes regardless of whether motions were filed, the likelihood of a felony conviction was higher for clients of the defenders who were less litigious. I reviewed 311 cases assigned in 2008 that had been resolved by early October. Comparing outcomes, I found that the clients of the defenders who tended to file motions, request experts, and investigate cases more frequently were convicted of a felony only 56% of the time. Clients of the remaining defenders were convicted of a felony 72% of the time.

Public defenders benefit their clients when they raise legal issues, explore factual and legal defenses, and zealously advocate on behalf of their clients. Grant County has defenders on staff who appreciate this fundamental notion and whose practices reflect that. Going forward, the County's goal should be to convince all of its defenders to embrace this approach.

Supervising Attorney

The County recently decided to bring the supervisor position "in house," making the Supervising Attorney a County employee rather than a contractor. The position has already been formally posted, and I understand that the County anticipates having outside applicants. After filling the supervisor position, the County plans to further restructure its public defense program by bringing approximately half of its defenders in house. The Supervising Attorney will assist in designing the new hybrid system. The County will then submit the resulting plan to the Monitor for approval prior to implementation.

Although I understand that the County will be considering other applicants for the position, I continue to support Alan White as Supervising Attorney at this time. I know of no other attorney locally who is better suited to the position than Alan White. Although applicants from outside the County may or may not be more qualified, I question whether the County can rely on such candidates to stay long term. Alan White is clearly committed to the success of the Grant County public defense program and has helped to build a more organized, structured defender over the last year.

[10] Obviously, focusing purely on felony conviction versus non-felony outcomes does not tell the full story. A felony conviction may very well be a good outcome for a defendant who had been facing more serious felony charges or who obtains a favorable sentencing recommendation. Assessing felony outcomes, however, is not possible based solely on dockets. For that reason, I have used the felony versus non-felony distinction as a rough measure of success.

[11] The higher rate of favorable outcomes may be the result of substantive problems with the cases themselves rather than the filing of a motion detailing those problems. In other words, the plea offer or dismissal may be based on proof problems that had already been or would have been identified by the prosecutor regardless of whether a motion was ever filed.

The Settlement Agreement requires the Monitor to oversee and evaluate the performance of the Supervising Attorney. Approximately a year ago, I asked the defenders to complete a written evaluation of Alan White. I also asked Mr. White to evaluate his own performance using the same evaluation form as the defenders. Assuming he is selected for the in-house position, I plan to repeat the evaluation process during the fourth quarter of this year. Comparing this year's results to last year's should provide a good measure of Mr. White's development as a supervisor while also helping identify areas for improvement in the future. I expect the defenders to give Mr. White positive reviews overall.

My own impression is that Mr. White has become a better supervisor over the last year. He has always been very supportive of and loyal to the defenders he supervises, sometimes to a fault. In recent months, however, he has become much more willing to assert his authority over the defenders when necessary. While enforcing discipline clearly does not come naturally to Mr. White, he seems to have recognized that it is an important part of his role. He has also demonstrated greater independence from the County, voicing his concerns regarding staffing needs and hiring authority even when he knew his views were not likely to be well received by his employers.

Unfortunately, Mr. White has not made as much progress in monitoring attorney performance as he has in other areas. Although I have repeatedly stressed the need for greater scrutiny of defender jail visits, investigation rates, and motions practice, Mr. White has not made these issues a priority. He has occasionally initiated efforts to evaluate attorney performance in these areas, but he seems to quickly lose steam. The third quarter was no exception. To his credit, Mr. White analyzed jail visits and investigation rates for the month of July and counseled defenders who needed improvement. He did not, however, repeat the process for August or September. As a result, he was unaware of the ongoing problems with some defenders detailed above. Similarly, after many months, Mr. White still has not followed through on his plans to monitor motions practice. In all of these areas, Mr. White has been forced to rely on my findings in order to learn about issues and potential problems within his own program.

Mr. White reports that due to the time he spent this quarter interviewing attorney and investigator applicants, dealing with case re-assignments resulting from the death of Mike Lewton, handling tasks related to the Best litigation, and attending to his own health concerns, he was not able to devote sufficient time to monitoring attorney performance. Although Mr. White's failure to attend to these problems is extremely frustrating, it is not uncommon for both public defenders and their supervisors to be so overwhelmed with their day-to-day responsibilities that they are unable to focus on larger issues. Because systemic issues rarely seem to need immediate attention, they are easily postponed and forgotten.

Mr. White simply needs to give issues such as jail visits and investigation rates more attention. He needs to monitor attorney performance monthly and counsel attorneys who are not complying with County policy. For attorneys who demonstrate a problematic

pattern over time, Mr. White should consider disciplinary action. In order to ensure that Mr. White gives these issues the requisite attention, I suggest that the County ask him to specifically address them in his monthly reports to the Board of County Commissioners. At some point, however, the County should be able to rely on its Supervising Attorney to identify and address problems within the public defender program on his own initiative. My continued support of Mr. White is contingent on his demonstrating the capacity to do just that during the fourth quarter.

Client Complaints

Alan White maintains a toll-free telephone line for client complaints. Instructions on how to contact Mr. White to make a complaint are posted in several locations at the jail and included in a flyer distributed to out-of-custody defendants at arraignment.[12] Calls to the complaint line are logged by Mr. White's assistant and referred to Mr. White or the assigned defender for follow-up. Many calls to the complaint line are not complaints at all. Defendants often call with requests for information or messages for their assigned attorneys. When complaints are more substantive, Mr. White investigates the matter, including visiting the defendant at the jail if necessary, and occasionally writes formal reports to the County detailing the results of his investigation.

Most calls to the complaint line relate to attorney-client contact. In the third quarter, the County appears to have again experienced problems relating to the jail phone system as a large number of inmates called to complain that they could not reach their assigned attorneys. In his August report, Mr. White noted that two attorneys, Mike Haas and Julie St. Marie, had their phone lines disconnected for some period of time.[13] Calls to the complaint line, however, suggest that there may have been problems reaching other attorneys as well.[14]

I understand that several of the attorneys have experienced a substantial increase in the cost per call to their toll-free lines, leading some to switch carriers and at least one to disconnect his service. As I have indicated previously, it is essential that inmates be able to reach their assigned attorneys by phone. Moreover, the Settlement Agreement specifically requires that each defender maintain a phone system that allows inmates to leave messages. The County should investigate any reports of problems with the jail phone system or the defenders' toll free lines immediately and if the problem is confirmed, the County should take corrective action as soon as possible.

[12] Based upon my observations during site visits, actual distribution of the flyers seems to be inconsistent.
[13] As of October 20, 2008, Mr. Haas line had still not been re-connected. Mr. White's monthly report erroneously reported that all defender lines were working in September.
[14] Mr. White's test on October 21, 2008 indicated that Ryan Earl's toll free line was no longer working. It is unclear how long it has been out of service.

During the third quarter, calls to the complaint line generally fell into the following categories:

# Calls	Nature of call
29	Request for attorney contact/visit
24	Problems reaching assigned attorney
17	Trying to contact attorney/request for attorney contact information
11	Request to speak or meet with Alan White/Alan White took call
10	Question about case
9	Message for assigned attorney
6	Request for name of assigned attorney
6	Substantive Complaint
3	Request for a new attorney

Some of the calls fell into more than one category. In addition, many clients called more than once with the same or similar complaints.

As I mentioned in my last report, the current system does not allow me to effectively monitor the more substantive complaints. Those are typically handled directly by Alan White, and the complaint line log does not always reflect the substance of his phone calls or meetings with inmates. I have requested copies of any written reports he has completed this year as well as any other written records he maintains regarding these complaints. If none currently exist, I plan to ask Mr. White to keep a personal log to track his own calls and jail visits relating to client complaints.

Conflicts of Interest

The Settlement Agreement requires both the Supervising Attorney and each defender to have a conflicts-check system. These procedures must be approved by the Monitor. During the third quarter, I reviewed and approved conflicts check procedures for Alan White as well as defenders Brian Gwinn, Mike Haas, Karen Lindholdt, John Perry, and Julie St. Marie. Mr. White recently submitted the procedures of Mike Prince and Janelle Peterson for approval. I have not received conflicts check procedures for Brett Billingsley, Ryan Earl, or Melissa MacDougall.

Conclusion

The County's decision to restructure its public defense program will undoubtedly bring many challenges in the coming months. Chief among them will be retaining the County's best defenders who are already apprehensive about what this transition means for them. I have urged the County to involve the defenders themselves in the process as much as possible to avoid any misunderstandings and unnecessary anxiety. It is my hope that the County will treat the defenders as partners in this endeavor.